

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEVEN P. TAYLOR
Claimant

VS.

FEDERAL EXPRESS CORP.
Respondent
Self-Insured

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Docket No. 210,676

ORDER

Respondent appeals from an April 29, 1996 preliminary hearing Order wherein Administrative Law Judge Shannon S. Krysl awarded claimant preliminary benefits.

ISSUES

On appeal respondent contends the Administrative Law Judge exceeded her jurisdiction by granting benefits because the evidence does not establish that claimant met with personal injury by accident which arose out of and in the course of claimant's employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant's current need for medical treatment is not the result of a personal injury by accident which arose out of and in the course of claimant's employment with the respondent. This conclusion by the Appeals Board is based upon the testimony of claimant together with the medical records and reports in evidence.

The Administrative Law Judge found claimant to be a very credible witness. We agree with her assessment in this regard. However, credibility is not the issue. The issue is causation. We find the opinions of orthopedic surgeons Morris, Bartal and Amrani to be more credible and should be given more weight than the opinion of family practice physician Dr. Joseph Schlageck on this question. Furthermore, in Dr. Schlageck's April 25, 1996 report he does not give his opinion to a reasonable degree of medical probability. Instead he states that claimant's injury "could" have been an aggravation of claimant's preexisting scoliosis.

The greater weight of the medical evidence supports a finding that claimant has not met his burden of proving it is more probably true than not true that his work activities aggravated his preexisting condition. We find a causal connection has not been established between claimant's work and his present need for the medical treatment requested. The Order for benefits should, therefore, be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the April 29, 1996, preliminary hearing Order entered by Administrative Law Judge Shannon S. Krysl should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: William Townsley III, Wichita, KS
Gary A. Winfrey, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director